U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed October 22, 2009 **United States Bankruptcy Judge**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	CASE NO. 09-37010
	§	
ERICKSON RETIREMENT	§	CHAPTER 11
COMMUNITIES, LLC, et al.[1]	§	Joint Administration Pending
	§	
Debtors.	§	

INTERIM ORDER (I) AUTHORIZING ERC'S USE OF CASH COLLATERAL, (II) GRANTING ADEQUATE PROTECTION TO SENIOR SECURED LENDERS, AND (III) SCHEDULING A FINAL HEARING

Upon consideration of Erickson Retirement Communities, LLC's ("ERC's") Motion for Interim and Final Orders (I) Authorizing the Use of Cash Collateral, (II) Granting Adequate Protection to Senior Secured Lenders, and (III) Scheduling a Final Hearing,[2] dated October 19, 2009 (the "Motion"), and all as more fully set forth in the Motion; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. §157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409, and due and proper notice of the Motion having been provided to the necessary

[1] The Debtors in these chapter 11 cases are Erickson Retirement Communities, LLC, Ashburn Campus, LLC, Columbus Campus, LP, Concord Campus GP, LLC, Concord Campus, LP, Dallas Campus GP, LLC, Dallas Campus, LP, Erickson Construction, LLC, Houston Campus, LP, Kansas Campus, LLC, Littleton Campus, LLC, Novi Campus, LLC, Senior Campus Services, LLC, Warminster Campus GP, and Warminster Campus, LP.

parties; and it appearing that no other or further notice need be provided; and a hearing having been held to consider the relief requested in the Motion (the "Hearing"); and the appearances of all interested parties having been noted in the record of the Hearing; and upon the record of the Hearing and all of the proceedings had before the Court; and objections received having been either resolved or overruled; and the Court having determined that the relief sought in the Motion is in the best interests of ERC, its creditors, and all parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby:

A. On October 19, 2009 (the "Petition Date"), the Debtors commenced these cases by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

B. The Debtors have continued in the possession of their property and have continued to operate and manage their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

C. The Court has jurisdiction over the matters raised in the Motion, and over the persons and property affected by the Motion, pursuant to 28 U.S.C. §§ 157 and 1334. The matters raised in the Motion are core proceedings pursuant to 28 U.S.C. § 157(b). Venue for the Debtors' cases is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

D. ERC provided notice of this Motion to (a) the Office of the United States Trustee for the Northern District of Texas; (b) the Debtors' 30 largest unsecured creditors on a consolidated basis; and (c) ERC's prepetition secured lenders.

E. As of the Petition Date, ERC had approximately $195.7 million in outstanding

[2] All capitalized terms not otherwise defined herein, shall have the meanings given to them in the Motion

secured debt under the Corporate Revolver.

F. The indebtedness of ERC under the Corporate Revolver is guaranteed by the Subsidiary Guarantors. The indebtedness under the Corporate Revolver is secured by all assets of ERC, all assets of the Subsidiary Guarantors (except for certain partnership interests and related rights owned by the Subsidiary Guarantors) and a pledge of 100% of the membership interests of ERC.

G. In the ordinary course of business, ERC requires cash on hand and cash flow from its operations to fund its working capital needs, liquidity needs, pre-and post-petition payroll obligations, and other routine post-petition payables. All of ERC's cash and cash proceeds are encumbered by a security interest in favor of the Senior Secured Lenders and, as such, constitute "cash collateral" of the Senior Secured Lenders (as such term is defined in Bankruptcy Code section 363(a), "Cash Collateral").

H. ERC has an immediate and urgent need to use its Cash Collateral. Absent the use of Cash Collateral, ERC will not be able to meet its working capital and liquidity needs and payroll obligations, and its estate, its creditors, and the residents at the communities will suffer immediate and irreparable harm.

I. Good and sufficient cause has been shown to justify the grant of interim relief requested in the Motion, and the requirements Rules 4001(c)(2) and 6003(b) of the Federal Rules of Bankruptcy Procedure have been satisfied for the entry of this order (the "Interim Order").

J. The terms of ERC's use of Cash Collateral, as more fully set forth in this Interim Order, (i) reflect ERC's prudent exercise of business judgment consistent with its fiduciary duties, and (ii) are essential and appropriate for the continued operation and management of ERC's businesses and the preservation of its assets and properties. Entry of this Interim Order

is in the best interests of ERC and its estate and creditors.

K. The adequate protection provided for under this Interim Order has been agreed to by the Senior Secured Lenders only on an interim basis on the terms set forth herein and the Senior Secured Lenders reserve all objections and rights under applicable law in connection with the Final Hearing and requests for use of its Cash Collateral beyond the Interim Period,

L. At a final hearing on the Motion (the "Final Hearing"), ERC will seek approval of the relief requested in the Motion on a final basis. Notice of the Final Hearing will be provided in accordance with the requirements set forth in this Interim Order.

NOW, THEREFORE, it is hereby:

ORDERED that the Motion is GRANTED as set forth herein; and it is further

ORDERED that any objections to the Motion that have not been withdrawn, waived or settled are hereby OVERRULED; and it is further

ORDERED that to the extent any of the findings of fact set forth in this Interim Order constitute conclusions of law, and/or to the extent any of the conclusions of law set forth in this Interim Order constitute findings of fact, they are hereby adopted as such; and it is further

ORDERED that ERC is authorized to use its Cash Collateral, upon the terms and conditions set forth in this Interim Order and in accordance with the budget attached hereto as Exhibit A (the "Budget"); and it is further

ORDERED that the Senior Secured Lenders are entitled to adequate protection of their interest in the Cash Collateral and other security granted to the Senior Secured Lenders under the Corporate Revolver. ERC shall provide the Senior Secured Lenders with the following adequate protection (collectively, the "Adequate Protection"):

(a) Each month, ERC shall pay the Senior Secured Lenders an amount equal to the interest for the Corporate Revolver in accordance with the ordinary interest rate set forth in the Corporate Revolver, and the parties reserve all rights as to how this amount ultimately shall be applied ;

(b) The Senior Secured Lenders are hereby granted additional and replacement security interests and liens (the "Adequate Protection Liens") in and upon all of the Debtors prepetition and postpetition assets and properties (tangible, intangible, real, personal and mixed), whether now existing or newly acquired or arising, and wherever located, including, without limitation, all receivables, other than avoidance actions arising under chapter 5 of the Bankruptcy Code ("Avoidance Actions"), all Cash Collateral, and all cash and non-cash proceeds, substitutions, accessions and profits of' all of the foregoing; provided however, that such Adequate Protection Liens shall be valid to the same extent, validity and priority as the pre-petition liens; and

(c) Subject to the Carve-Out for certain professional fees and administrative expenses incurred during two week period covered by the Interim Order and the Budget, the Senior Secured Lenders are hereby granted a superpriority claim as provided in Bankruptcy Code section 507(b) (the "Superpriority Claim") to the extent of any diminution in the value of the Senior Secured Lenders' interest in the Cash Collateral; and it is further

ORDERED that ERC shall provide to the Senior Secured Lenders, beginning from the date of entry of this Interim Order, a weekly report containing the information which the Debtors have heretofore been providing to the Senior Secured Lenders, including but not limited to the following information: (a) all receipts and disbursements of ERC; and

(b) a reconciliation of actual receipts and disbursements with those set forth in the Budget on a line-by-line basis showing any variance to the proposed corresponding line item of the Budget; and it is further

ORDERED that to the extent unencumbered funds are not available to pay administrative expenses in full, the Adequate Protection granted hereunder to the Senior Secured Lenders shall be subject only to payment of the Carve-Out. As used in this Interim Order, the term "Carve-Out" means the following items of expenses and fees that are actually incurred during the two week period covered by the Interim Order and the Budget: (a) the unpaid fees of the Clerk of the Court and the United States Trustee pursuant to 28 U.S.C. § 1930(a); and (b) the aggregate accrued and unpaid fees and expenses payable under Bankruptcy Code sections 330 and 331 to professionals retained pursuant to an order of the Court by the Debtors and any statutory committee which may be appointed in these cases, not to exceed the amounts permitted therefor in the Budget and subject to ultimate Bankruptcy Court approval under applicable provisions of the Bankruptcy Code; and it is further

ORDERED that subject to the Carve-Out, any claim or lien granted by this Interim Order with respect to the Adequate Protection shall not be: (a) subject or junior to any lien that is avoided and preserved for the benefit of ERC's estate, whether under Bankruptcy Code section 551 or otherwise; or (b) subordinated to or made pari passu with any other lien, whether under Bankruptcy Code section 364(d) or otherwise. Except for liens having priority over liens held by the Senior Secured Lenders as of the Petition Date, if any, no claim or lien having a priority superior to or pari passu with those granted by this Interim Order with respect to the Adequate Protection shall be granted or allowed until the indefeasible payment in full in cash and satisfaction in the manner provided in this Interim Order of the Adequate Protection; and it is

further

ORDERED that this Interim Order shall be sufficient and conclusive evidence of the validity, perfection and priority of any claim or lien granted by this Interim Order with respect to the Adequate Protection Liens (provided however, that such Adequate Protection Liens shall be valid to the same extent, validity and priority as the pre-petition liens) without the necessity of filing or recording any financing statement or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action to validate or perfect in accordance with applicable non-bankruptcy law any claim or lien granted by this Interim Order with respect to the Adequate Protection, or to entitle the Senior Secured Lenders to the priorities granted herein. Notwithstanding the foregoing, the administrative agent (the "Agent"), on behalf of the Senior Secured Lenders, is authorized to file, as it deems necessary in its sole discretion, such financing statements, notices of lien and other similar documents to perfect in accordance with applicable non-bankruptcy law any lien granted by this Interim Order with respect to the Adequate Protection, and all such financing statements, notices of lien and other similar documents shall be deemed to have been filed or recorded as of the Petition Date; *provided, however,* that no such filing or recordation shall be necessary or required to create or perfect any lien granted by this Interim Order with respect to the Adequate Protection. ERC is authorized and directed to execute and deliver to the Agent all financing statements, notices of lien and other documents as the Agent may reasonably request. The Agent, in its sole discretion, may file a photocopy of this Interim Order as a financing statement with any filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, notices of lien or other documents; and it is further

ORDERED that the automatic stay imposed by Bankruptcy Code section 362(a) is

modified as necessary to effectuate all of the terms and provisions of this Interim Order, including but not limited to: (a) permit ERC to grant any claim or lien granted by this Interim Order with respect to the Adequate Protection; (b) permit FRC to perform such acts as the Senior Secured Lenders may request to assure the perfection and priority of the liens granted herein; (c) permit ERC to incur all liabilities and obligations to the Senior Secured Lenders under the terms of this Interim Order; and (d) authorize ERC to pay, and the Senior Secured Lenders to retain and apply, any payments provided for under the terms of this Interim Order; and it is further

ORDERED that this Interim Order and the Budget shall constitute valid and binding rights and obligations of ERC, enforceable by and against ERC in accordance with their respective terms. No obligation, payment, transfer or grant of security under this Interim Order shall be stayed, restrained, voidable or recoverable under the Bankruptcy Code or any applicable non-bankruptcy law, or subject to any defense, reduction, setoff, recoupment or counterclaim; and it is further

ORDERED that, notwithstanding anything contained in this Interim Order to the contrary, nothing in this Interim Order limits, reduces, impairs or alters any of the rights or claims of the NFP's[3], their communities (the "Communities"), or the residents of those Communities (the "Residents") against or with respect to the Debtors, the Debtors' property, the Debtors' lenders or the Debtors' lenders' collateral. These NFP and Resident rights and claims, to the extent of the validity and priority of such rights and claims, include, but are not limited to: (i) the rights and claims of the Residents to occupy their units, to utilize the facilities of their

[3]The NFPs are: (i) Ann's Choice, Inc.; (ii) Ashby Ponds, Inc.; (iii) Brooksby Village, Inc.; (iv) Cedar Crest Village, Inc.; (v) Eagle's Trace, Inc.; (vi) Fox Run Village, Inc.; (vii) Greenspring Village, Inc.; (viii) Hickory Chase, Inc.; (ix) Highland Springs, Inc.; (x) Linden Ponds, Inc.; (xi) Monarch Landing, Inc.; (xii) Oak Crest Village, Inc.; (xiii) Riderwood Village, Inc.; (xiv) Seabrook Village, Inc.; (xv) Sedgebrook, Inc.; (xvi) Tallgrass Creek, Inc.; (xvii) Wind Crest, Inc.; and (xviii) Hickory Chase, Inc. all of which are Maryland nonstock corporations; and (xix) Maris Grove, Inc., a Pennsylvania corporation.

community, to receive the services promised under their Residence and Care Agreements, and the right to receive a refund of their Initial Entrance Deposit or Entrance Deposit pursuant to said Residence and Care Agreements; (ii) the rights and claims of the NFP's pursuant to their management agreements, lease agreements, licensing agreements, development agreements, loan agreements, working capital agreements, purchase option agreements, guarantee agreements, indemnity agreements, warranty agreements, and any other agreements with the Debtors; and (iii) any rights of setoff or recoupment and any other common law or statutory rights relating to any of the above arising from the relationship between the NFP's and the Debtors; and it is further

ORDERED that immediately upon entry by the Court, the provisions of this Interim Order shall become binding upon and inure to the benefit of ERC, the Senior Secured Lenders, all other creditors of ERC, any committee appointed in these cases and all other parties in interest in these cases and their respective successors and assigns (including any estate representative, chapter 7 trustee or other trustee or fiduciary hereafter appointed as a legal representative of ERC or with respect to the property of the estate of ERC); and it is further

ORDERED that the provisions of this Interim Order, including the grant of claims and liens to or for the benefit of the Senior Secured Lenders, and any actions taken pursuant to this Interim Order, shall survive the entry of any order: (a) confirming a chapter 11 plan in ERC's case; or (b) converting ERC's case to a case under chapter 7 of the Bankruptcy Code; and it is further

ORDERED that in accordance with Bankruptcy Code section 364(e), which is applicable to the use of Cash Collateral contemplated by this Interim Order, in the event that any or all of the provisions of this Interim Order are hereafter modified, amended or vacated by a

subsequent order of this Court or any other court, no such modification, amendment or vacation shall affect the validity, enforceability or priority of any Adequate Protection incurred or any claim or lien granted to the Senior Secured Lenders under this Interim Order. Notwithstanding any modification, amendment or vacation, any Adequate Protection incurred, and any claim or lien granted to the Senior Secured Lenders, under this Interim Order arising prior to the effective date of such modification, amendment or vacation shall be governed in all respects by the original provisions of this Interim Order, and the Senior Secured Lenders shall be entitled to all of the rights, remedies, privileges and benefits granted herein; and it is further

ORDERED that except as expressly provided for herein, this Interim Order shall not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect or incidental beneficiary; and it is further

ORDERED that to the extent not already provided for in this Interim Order, ERC and its respective officers, employees and agents are hereby authorized and empowered to take such actions as are necessary or appropriate to effectuate the relief granted pursuant to this Interim Order in accordance with the Motion; and it is further

ORDERED that the terms and conditions of this Interim Order shall be immediately effective and enforceable upon entry of this Interim Order; and it is further

ORDERED that a further interim hearing is scheduled for **October 29, 2009 at 9:30 a.m. (Central Time)**; and it is further

ORDERED that the Court shall retain jurisdiction over all matters arising from or relating to the implementation of this Interim Order.

End of Order